

LFC Requester:**Eric Chenier****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*

Original ☐ Amendment ☒
 Correction ☐ Substitute ☐

Date 4 Feb 2016**Bill No:** SB 113A**Sponsor:** Sen M. Papen & Rep P. Pacheco**Agency Code:** 305**Short** Assisted Outpatient Treatment**Person Writing** Joseph M. Dworak, AAG**Title:** Act**Phone:** 505.827.6986 **Email** jdworak@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **HB 198**
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

The amendment of SB113 from the Judiciary Committee includes the following changes:

- 1) Clarifies that the municipality will pay the legal fees of the district court related to proceedings under the Assisted Outpatient Treatment Act, and
- 2) Removes the fourth degree felony penalty for intentional release or use of confidential information or records under the Assisted Outpatient Treatment Act.

FISCAL IMPLICATIONS**SIGNIFICANT ISSUES****PERFORMANCE IMPLICATIONS****ADMINISTRATIVE IMPLICATIONS****CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 198 – introduced by Rep. Paul Pacheco

TECHNICAL ISSUES**OTHER SUBSTANTIVE ISSUES**

SB 113 imposes several short time requirements in regard to scheduling hearings and issuing decisions. Several of these time requirements could be better clarified to avoid confusion in implementing procedures under the Act. For example Section 6 requires a court to fix a date for a hearing “no sooner than three or later than seven days after the date of service.” If “the date of service” is in regards to the notice of hearing, it is impossible to determine when the hearing must be scheduled because the triggering date (date of service) is unknown until the document is actually served. Unless service is defined another way or done through using electronic service methods, one cannot be sure when the date of the hearing must be held. Instead, the hearing date could be

scheduled a number of days from the date of filing the petition, and require the court to issue a notice of hearing within a certain number of days after the petition is filed. Consideration should be given as to what method of service will take place and circumstances where service may be delayed.

SB 113 mandates that a respondent shall be represented by counsel at all stages of the proceeding without providing further details. It is not clear who would provide counsel if respondent is pro se. This role may be served by contract attorney services through the administrative office of the courts, but it should be made clear and financial obligations should be considered. The Judiciary Committee's amendment states that a participating municipality or county's MOU with its respective district court will include "legal fees", but it is not entirely clear that these legal fees are for contract attorneys to represent pro se respondents. Furthermore, securing an attorney, whether appointed or privately obtained, may take time. Consideration should be given to how obtaining counsel would affect the short time requirements for holding a hearing within a relatively short time frame (currently 3-7 days after notice of the hearing).

SB 113 provides a "right to an expeditious appeal" of a final order. It is not clear how this would be applied to the judicial system or if more specific time requirements could be included.

SB 113 Section 11 limits assisted outpatient treatment for a period not to exceed one year, but it is not clear whether applications for continued periods of treatment can extend an original treatment period beyond the original 12 month maximum period (eg: at month 9 of a 10 month initial treatment period can an application for continued treatment extend the treatment an additional 12 months, for a total of 22 months, or is the application for continued treatment limited to a 2 month extension for a total of 12 months?). The maximum period for treatment under the Act, including any extensions contemplated under Section 11, could be clarified.

ALTERNATIVES

HB 198 is an alternative, but the language appears to be identical to the original SB 113.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

Amendments were offered by the Senate Public Affairs Committee and the Senate Judiciary Committee.